Supreme Court, U.S.
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CASE NO. (A-796) 85-2129

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

JOSEPH B. BERGEN, J.D., Attorney at Law, Individually, and on Behalf of All Other Attorneys in the State of Georgia Similarly Situated,

Appellant,

VS.

MARTINDALE-HUBBELL, INC.,

Appellee.

RESPONSE TO APPELLEE'S MOTION TO DISMISS

ON APPEAL FROM
THE COURT OF APPEALS
AND
THE SUPREME COURT OF GEORGIA

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RESPONSE TO MOTION TO DISMISS

NOW COMES the above styled Appellant, JOSEPH B. BERGEN, pursuant to Rule 16.5 and 42 of the Supreme Court of the United States and files this response and brief opposing Appellee's Motion to Dismiss.

The Appellee in their Motion to Dismiss Appellant's appeal assert as their grounds for dismissal the contention that:

1. The decision of the Georgia Court of Appeals at issue did not call into question the validity of any federal statute.

2. The Appellant's appeal does not present a substantial federal question.

ARGUMENT AND CITATION OF AUTHORITY

IN OPPOSITION TO MOTION

A. The decision of the Georgia Court of Appeals did call into question the validity of a federal statute.

The opinion entered on October 23, 1985 by the Court of Appeals of Georgia held that the Appellee's publication does not constitute a consumer report within the meaning of Title 15 USC Section 1681, et seq., which does, in fact, draw into question the validity of the Statute of the United States codified in this Code Section, and this decision is against it validity, thereby granting this Court jurisdiction of this appeal under 28 USC, Section 1257.

The Supreme Court in Baltimore and PR Co. v. Hopkins, 130 U.S. 210, 32 L.Ed. 908, 9 S.Ct. 503 (1889), held that the validity of a statute is drawn into question whenever the power to enact it, as it is by its terms, or as it is made to read by construction, is fairly open to denial and is denied.

The Georgia Court of Appeals ruling that Appellee's publication does not

constitute a consumer report within the meaning of Title 15 USC, Section 1681, et seq., denies to Appellant the disclosure provisions of the Fair Credit Reporting Act as set out in Title 15 USC, Section 1681, et seq., and, thereby, calls into question the validity of the statute as it is made to read by the construction given to it in this opinion under the Hopkins decision, supra.

However, should this Court determine that this appeal is improvidently taken from the decision of the Court of Appeals of Georgia which the Supreme Court of Georgia declined to review, as the proper mode of review of this case is by Petition for Certiorari, this appeal should be regarded and acted on as a Petition for Writ of Certiorari as if duly presented to the Supreme Court at the time the appeal was taken under the provisions of Title 28 USC Section 2103

since the importance of the case requires that certiorari be granted. Ivanhoe Irrigation District v. McCracken, 357 US 275, 2 L.Ed. 2d 313, 78 S.Ct.1174 (1958), Headnote 2, page 1324-1325.

B. The Appellant set out in Division VI, page 17 of its Jurisdictional Statement that the question presented have never been passed on by this Court and is of great public importance. The lower court decision in this case is so inconsistent in theory as to leave the intent and meaning of the Fair Credit Reporting Act in a state of confusion. The importance of this case is further demonstrated by the fact that the issue involved is a troublesome one, that is, numerous lawyers have from time to time brought suit against this same Appellee, Martindale-Hubble, Inc., in lower courts regarding the ratings assigned to lawyers by the Appellee

thereby making desirable a definite ruling by the Supreme Court on this issue. United States v. Standard Oil, 332 US 301, 302, n. 2; U. S. v. Powell, 330 US 338.

C. Consequently, the Court of Appeals of Georgia in holding that Appellee's publication is not a consumer report under the applicable provisions of Title 15 USC Section 1681, et seq., thereby denying the appellant the right to disclosure as provided by statute, clearly presents a substantial federal question to invoke the jurisdiction of the United States Supreme Court in either this pending appeal or by review on certiorari as this appeal may be regarded since the issues are of extraordinary national importance.

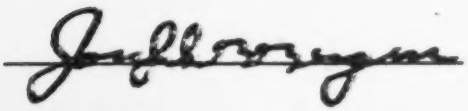
D. In the event the Supreme Court at this point is undecided on whether to note probable jurisdiction either on

appeal or by certiorari it is suggested that the Court delay this decision and allow the parties to fully brief the issues and argue the case before that decision is made on the jurisdiction issue and that an order postponing the determination of jurisdiction now be entered. Cramp v. Board of Public Instruction, 366 US 934. Ohio ex. rel. Eaton v. Price, 346 US 246, 3 L.Ed.2d 1200, 70 S.Ct. 978.

Dated: August 1, 1986.

Respectfully submitted,

JOSEPH B. BERGEN
Attorney at Law
Appearing Pro Se



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PROOF OF FILING AND SERVICE

I, the undersigned JOSEPH B. BERGEN, Attorney of Record for the Appellant, appearing Pro Se, and a member of the Bar of the Supreme Court of the United States, deposes and says that on the 4th day of August, 1986, I filed 40 copies of the foregoing Response to Appellee's Motion to Dismiss to the Supreme Court of the United States with the Clerk of the Supreme Court of the United States and I served three copies of this Response to Appellee's Motion to Dismiss to the Superme Court of the United States on Alan S. Gaynor, Esq. Attorney for Appellee, whose Post Office Address is: Post Office Box 2139, Savannah, Georgia 31498, who are all the parties required to be served, by causing to be placed these copies of said Response to Appellee's Motion to Dismiss in an authorized depository for mail at the

United States Post Office at Atlanta, Georgia in a properly addressed envelope with sufficient prepaid postage thereon to insure First Class Certified Mail delivery within the time allowed for such filing.

This 4th day of August, 1986.

JOSEPH B. BERGEN
Attorney for Appellant
Appearing Pro Se

Sworn to and subscribed to before me
This 4th day of August, 1986.

Virginia Blake Bergen
Notary Public, Georgia
[SEAL]
My Commission Expires: September 8, 1987.